

§ 19.45

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(f) Additional procurement procedures.

(1) Section 165 of the STAA of 1982, as amended; section 337 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987, 49 U.S.C. 1601, section 1048 of the Intermodal Surface Transportation Efficiency Act of 1991, and section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, 49 U.S.C. app. 2226, impose Buy America requirements on the procurement of foreign products and materials by all recipients of FHWA, FTA, and Federal Aviation Administration (FAA) funds. Procedures are contained in 49 CFR part 660, Buy America Requirements and part 661, Buy America Requirements—STAA of 1982. In addition, for FTA recipients, nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 11. Non-regulatory guidance for FAA programs is contained in FAA Order 5100.38A and special conditions in grant awards.

(2) Section 511(a)(16) of the Airport and Airway Improvement Act of 1982, 49 U.S.C. app. 2210, requires FAA recipients and subrecipients to extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and to award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the 1949 Federal Property and Administrative Services Act, or equivalent airport sponsor qualifications based requirements. Non-regulatory guidance for FAA programs is contained in FAA Order 5100.38A and special conditions in grant awards.

(3) Section 3(a)(2)(C) of the Federal Transit Act, as amended, (49 U.S.C. app. 1602(a)(2)(C)) prohibits the use of grant or loan funds to support procure-

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ments utilizing exclusionary or discriminatory specifications. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 15 and Attachment A.

(4) Section 1241(b)(1) of 46 U.S.C. and 46 CFR part 381, Cargo Preference—U.S. Flag Vessels impose cargo preference requirements on the shipment of foreign made goods for FTA recipients. Nonregulatory guidance is contained in FTA Circular 4220.1B, Third Party Contracting Guidelines, Chapter I, section 10.

§ 19.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 19.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

- (a) Basis for contractor selection,
- (b) Justification for lack of competition when competitive bids or offers are not obtained, and
- (c) Basis for award cost or price.

§ 19.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

§ 19.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following

provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the

contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

REPORTS AND RECORDS

§ 19.50 Purpose of reports and records.

Sections 19.51 through 19.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 19.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 19.26.

(b) The Federal awarding agency shall prescribe the frequency with